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June 25, 1998

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JUN 25 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW - Room 222
Washington, DC 20554

Federal Communications Commission
Office of Secretary

Re: CC Docket No. 96-45
AAD/USB File No. 98-37

Dear Ms. Salas:

On June 24, 1998, Porter Childers, Mary Henze, Marv Bailey, BB Nugent, Jim Lambertson and Bill Maher, representing the United States Telephone Association (USTA), had three separate meetings with Federal Communications Commission staff. They met with Kyle D. Dixon, Legal Advisor to Commissioner Michael K. Powell; James L. Casserly, Senior Legal Advisor to Commissioner Ness; and Thomas Power, Legal Advisor to Chairman Kennard, to discuss USTA's position regarding legal and policy issues associated with the non-common carrier status of the Iowa Communications Network. The attached material was the basis for the presentation. The USTA representatives also discussed their opposition to the reconsideration petition of the Washington Department of Information Services regarding advanced services.

In accordance with Section 1.1206(b)(2) of the Commission's rules, two copies of this notice and attached presentation materials are being submitted to your office for filing in each of the referenced proceedings. Please include them in the public records of those proceedings.

Respectfully submitted,

Porter Childers
Executive Director - Legal & Regulatory Affairs

attachment

cc:	Chairman Kennard	Paul Gallant
	Commissioner Ness	Lisa Gelb
	Commissioner Powell	Kevin J. Martin
	Commissioner Furchtgott-Roth	Ruth Milkman
	Commissioner Tristani	Amy L. Nathan
	Kathryn C. Brown	Thomas C. Power
	James L. Casserly	Jane Whang
	Kyle D. Dixon	Valerie Yates
	Irene M. Flannery	

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USTA

**THE IOWA COMMUNICATIONS NETWORK
IS NOT A TELECOMMUNICATIONS CARRIER
OR A COMMON CARRIER
CC DOCKET NO. 96-45
AAD/USB FILE NO. 98-37**

EX PARTE PRESENTATION

JUNE 24, 1998

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**Federal Communications Commission
Office of Secretary**

USTA THE IOWA COMMUNICATIONS NETWORK IS NOT A TELECOMMUNICATIONS CARRIER

I. Summary

**FCC should reaffirm the finding of the Fourth
Reconsideration Order that ICN is not a
telecommunications carrier**

USTA THE IOWA COMMUNICATIONS NETWORK IS NOT A TELECOMMUNICATIONS CARRIER

II. Legal Summary

- A. ICN does not satisfy the definition of telecommunications carrier under the 1996 Act**
- B. ICN does not offer service to the public**
- C. ICN does not operate on a common carrier basis**
- D. ICN does not satisfy the D.C. Circuit's requirements for common carrier status**

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THE IOWA COMMUNICATIONS NETWORK
IS NOT A TELECOMMUNICATIONS CARRIER

III. Policy Summary

- A. Changing the status of ICN would not advance the goals of the schools and libraries program**
- B. Changing the status of ICN would distort competition**

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THE IOWA COMMUNICATIONS NETWORK IS NOT A TELECOMMUNICATIONS CARRIER

- IV. The Fourth Reconsideration Order in the Universal Service Proceeding Rightly Found ICN and Other State Networks Not to Be Telecommunications Carriers (4th Reconsideration Order ¶¶ 177, 187)**
- A. The ICN petition is a repetitive petition for reconsideration of the Fourth Reconsideration Order; since the Commission has already considered the status of ICN and other state networks, the petition should be dismissed**
- B. Such networks cannot receive direct “schools and libraries” support under Section 254(h)(1)(B) (4th Reconsideration Order ¶187)**



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THE IOWA COMMUNICATIONS NETWORK IS NOT A TELECOMMUNICATIONS CARRIER

- C. They may obtain and pass on discounts when procuring supported telecommunications (4th Reconsideration Order ¶183)**
- D. They may receive reimbursement for providing access to the Internet and internal connections (4th Reconsideration Order ¶190)**



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THE IOWA COMMUNICATIONS NETWORK IS NOT A TELECOMMUNICATIONS CARRIER

- V. ICN Does Not Provide Telecommunications “To The Public, or to Such Classes of Users as to Be Directly Available to the Public”**
- A. Only narrow classes of “public agencies” and “private agencies,” enumerated in Iowa law, are even eligible to become authorized users. These agencies are not “the public”**
- 1. Example: Iowa state agencies are eligible, but most local and county agencies in Iowa are not**
 - 2. Example: Post offices with federal grants for demonstration projects are eligible, but other post offices are not**



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B. Many nominally eligible agencies now require an act of the Iowa legislature to become authorized ICN users

- 1. Legislation is required for many agencies that did not become part of ICN by July 1, 1994**
- 2. Even authorized users are treated differently: based on identity, ICN charges different rates for the same service**

Example: Federal agencies must pay \$45/hour per site for video sessions. State government users pay \$10/hour per site. Telemedicine users pay \$45/hour per site; telemedicine training users pay \$6/hour per site. This contrasts with the broad residential/business rate structure of LECs and other common carriers.



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THE IOWA COMMUNICATIONS NETWORK IS NOT A TELECOMMUNICATIONS CARRIER

VI. ICN's Services Are Not Services Offered on a Common Carrier Basis

A. ICN does not hold itself out to serve indifferently all potential users: for ICN, Iowa law determines on an individualized basis "whether and on what terms to serve"

- 1. ICN is prohibited by law from serving "all potential users" - only users specified by statute or regulation are permitted**
- 2. Iowa law thus bars many potential users from receiving service**
- 3. Legislation is needed to approve some individual users**
- 4. ICN considers the individualized circumstances of authorized users**



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B. ICN limits the subject matter of communications by end users

- 1. The test is whether “customers transmit intelligence of their own design and choosing”**
- 2. Iowa law limits the subject matter of transmissions to the written mission of the authorized users**
- 3. ICN cannot be used for for-profit activities**